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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010-279**

13 **KATHLEEN NEPHEW**
14 **5955 Tander Avenue**
San Jose, CA 95123

ACCUSATION

15 **Registered Nurse License No. 706853**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about July 11, 2007, the Board of Registered Nursing issued Registered Nurse
24 License Number 706853 to Kathleen Nephew ("Respondent"). The Registered Nurse License
25 expired on May 31, 2009, and has not been renewed.

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 118, subdivision (b) of the Code provides in relevant part that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, . . ."

. . .

8. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

. . .

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to

1 himself or herself, any other person, or the public or to the extent that such use impairs his or her
2 ability to conduct with safety to the public the practice authorized by his or her license.

3
4 9. Business and Professions Code section 125.3 provides, in relevant part, that the Board
5 may request the administrative law judge to direct a licensee found to have committed a
6 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
7 investigation and enforcement of the case.

8 FACTUAL BACKGROUND

9 10. In 2008, Respondent was employed as a registered nurse at the Santa Clara Valley
10 Medical Center in Santa Clara, California. Respondent was referred to the Board's Diversion
11 Program and accepted into this program on August 15, 2008, based on her admitted addiction to
12 cocaine and alcohol. Subsequently, on April 27, 2009, Respondent self-reported that she had
13 relapsed in the use of cocaine and alcohol and also began to use methamphetamines. On August
14 15, 2009, Respondent decided to voluntarily withdraw from the Board's Diversion Program and
15 on August 20, 2009, was terminated from the Diversion Program for non-compliance.

16 FIRST CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct)

18 11. Respondent is subject to disciplinary action under Code sections 2761(a) in that she
19 acted unprofessionally as alleged in paragraph 10, as set forth above.

20 SECOND CAUSE FOR DISCIPLINE

21 (Drug Use in a Manner Dangerous To Oneself or Others)

22 12. Respondent is subject to disciplinary action under Code section 2762 (b) as set forth in
23 paragraph 10 above, in that she used alcohol and other illegal substances in a manner that was
24 dangerous and/or injurious to herself and/or that would impair her ability to safely practice as a
25 registered nurse.

26 PRAYER

27 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
28 and that following the hearing, the Board of Registered Nursing issue a decision:


1 1. Revoking or suspending Registered Nurse License Number 706853, issued to
2 Kathleen Nephew.

3 2. Ordering Kathleen Nephew to pay the Board of Registered Nursing the reasonable
4 costs of the investigation and enforcement of this case, pursuant to Business and Professions
5 Code section 125.3;

6 3. Taking such other and further action as deemed necessary and proper.

7
8 DATED: _____

11/25/09


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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